

THE RHODE ISLAND AUDIT

THE OCEAN STATE'S
FIRST AUDIT
OF ITS
ENVIRONMENTAL LAND USAGE RESTRICTIONS (ELURs)
SUMMER 2005

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Basics of Rhode Island's Voluntary Cleanup Program (VCP)

- The Site Remediation Program is made up of 9 DEM employees
- Program currently has 655 active sites
- Program is not privatized
- Institutional Controls began in 1993
- Currently 176 sites in RI have ELURs

Institutional Controls in RI

- First ELUR was recorded in 1996
- ELURs are required for all properties subject to:
 - Final remedies where remaining contamination is greater than Residential Direct Exposure Criteria or the designated groundwater classification;
 - Final remedies approved under a variance;
 - Final remedies based on reasonably foreseeable exposures.

Institutional Controls in RI (cont.)

- Essentially, ELURs allow certain levels of contamination to be left on site as long as certain restrictions are adhered to.
- ELURs run with the land as recorded on the title by the Property owners
 - Binding on all owners, successors, and/or assigns
 - Terms of the restriction are negotiated starting with a boilerplate agreement that is an Appendix to the Regulations.

Institutional Controls in RI (cont.)

- The restrictions and controls shall include provisions to accomplish the following:
 - Prohibit activities on the Site that may interfere with remedial action, O & M, monitoring, etc;
 - Prohibit activities that may result in human exposure or that may result in a release of contamination that was contained;
 - Prior notice to the Department of intent to sell;

Institutional Controls in RI (cont.)

- Right of the Department to enter property to monitor compliance with the remedial action;
- Description of restrictions placed on the property and/or allowable uses of the property.

OLD ELUR Vs. NEW ELUR

The Boilerplate

- 2 Major Changes to the Department Boilerplate:
 - Added in an “Emergencies” Section
 - Changed the “Non-Compliance” Section to **“Inspection & Non-compliance”**
 - The Inspection portion required Annual Self-Certification
 - There was no statute or regulatory change
 - The first ELUR with the annual monitoring requirement was recorded on May 25, 2000

The Big Picture

- Currently RIDEM's ELURs are good for 30 years – RIDEM intends to seek legislation to place the ELURs on the title in perpetuity.
- It has been questioned whether or not RI's ELURs are legally enforceable.

The Audit

- Why did we do the ELUR Audit?
 - Integrity of Engineering Controls
 - Annual Monitoring Requirements
 - Long Term Monitoring by Department
 - Compliance

Who did the audit?

- Technical Summer Intern – Robert Ferraro
- Relatively small cost to implement audit
- Due to size of RI only one intern required

First Steps

- Ran a query in the Site Remediation database to develop a list of all ELURs in the State by Town
- Researched who the Current Property Owner was for each site
- Developed a Field Inspection Form

ELUR Audit

Field Inspection Form

- Are the annual inspections that are required for this property up to date?
- Are there any observed residential uses?
- Are there any known or observed drinking water wells on the property?
- Does it appear that any post-remediation construction activities have taken or are taking place?
- Are there any observed areas on the property where people are potentially being exposed to contamination?

ELUR Audit

Field Inspection Form

- Are there any known or observed cracks, holes, or breaks in the existing capped surfaces (asphalt or concrete) where water may infiltrate into the underlying soils?
- Have there been any known or observed subsurface structures (USTs, below grade foundations, etc.) constructed since the remediation was completed?
- Are the post-construction engineered controls being disturbed?

What The Audit Entailed

- Using the ELUR list, Rob located all of the ELURs in the Department files
- Divided the sites by Town
- Tracked down ownership information
- Created a mailing list with the updated ownership information

What The Audit Entailed

- The day before site visits he would:
 - Review the ELURs in the designated Town to understand what Engineered Controls he was looking for;
 - Discuss ELUR details with project managers;
 - Use GIS to see where the sites were located in the Town and map out a route for the inspections.
- Conduct Field Inspections
- Collect Information on Town Water Connections
- Of the 157 sites that had ELURs by June 1, 2005, Rob completed inspections at 150 of them.

Findings of the Audit

- Many of the properties had changed hands without notifying the Department
- 28 of the 150 sites appeared to be out of compliance for technical reasons (Approx. 19%)
- Of the 95 sites that are required to do annual monitoring, only 22 had done so (71% out of compliance for administrative issues)

What we learned from the audit

- Many of the properties had changed hands since the ELUR was recorded
- Some things can not be determined by visual inspection
- The majority of Site owners are not doing annual monitoring
- Engineered Controls appeared to be Properly maintained

Next Steps

- Site Remediation staff needs to follow up on 28 sites that appeared to be out of compliance
- If sites are determined to be out of compliance, the staff will issue Informal Enforcement Actions to remedy the situation through corrective actions
- An Annual Inspection Form will be developed for Property Owners to complete by a specified deadline date

Next Steps

- All sites, including those that do not have the annual inspection requirement will be mailed the new form.
- Informal Enforcement Actions will be taken against those that are required by their ELUR to perform the annual monitoring and fail to respond to mailing.
- Work in progress – will re-evaluate property owner forms & annual self inspection process.

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